

1 SONIA R. CARVALHO (SBN 162700)
CITY ATTORNEY
2 LAURA A. ROSSINI (SBN 223471)
CHIEF ASSISTANT CITY ATTORNEY
3 EMAIL: LROSSINI@SANTA-ANA.ORG
ANDREA GARCIA-MILLER (SBN 231263)
4 ASSISTANT CITY ATTORNEY
EMAIL: AGARCIA-MILLER@SANTA-ANA.ORG
5 CITY OF SANTA ANA
20 CIVIC CENTER PLAZA M-29
6 P.O. BOX 1988
SANTA ANA, CALIFORNIA 92702
7 TELEPHONE: (714) 647-5218
FACSIMILE: (714) 647-6515
8

9 Attorneys for Defendants
CITY OF SANTA ANA; and
SANTA ANA CITY COUNCIL
10

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION
14

15 ORANGE COUNTY APARTMENT
HOUSE ASSOCIATION, INC. dba
16 APARTMENT ASSOCIATION OF
17 ORANGE COUNTY,

18 Plaintiffs,

19 v.

20 CITY OF SANTA ANA; and SANTA
21 ANA CITY COUNCIL; and DOES 1-25,
22 inclusive,

23 Defendants.
24
25
26
27
28

Case No.: 8:23-cv-00608-CJC -ADSx

**DEFENDANTS CITY OF SANTA
ANA AND SANTA ANA CITY
COUNCIL'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*(Filed concurrently with Defendants'
Request for Judicial Notice and
Proposed Order)*

DATE: May 22, 2023

TIME: 1:30 p.m.

COURTROOM: 9B

JUDGE: Cormac J. Carney

1 **TO PLAINTIFF, THEIR COUNSEL OF RECORD, AND THIS**
2 **HONORABLE COURT:**

3 **PLEASE TAKE NOTICE** that on May 22, 2023 at 1:30 p.m. in Courtroom 9B
4 of the United States District Court for the Central District of California, Southern
5 Division, located at 411 West Fourth Street, Santa Ana, California 92701,
6 Defendants CITY OF SANTA ANA and SANTA ANA CITY COUNCIL’S
7 (collectively, “City” or “Defendants”) Motion to Dismiss Plaintiff ORANGE
8 COUNTY APARTMENT HOUSE ASSOCIATION, INC. dba APARTMENT
9 ASSOCIATION OF ORANGE COUNTY’S (“AAOC” or “Plaintiff”) Complaint
10 (“COMPLAINT”) for declaratory and injunctive relief will be heard.

11 Defendants’ motion is brought on the following grounds:

- 12 1. Plaintiff’s Complaint and each cause of action contained therein is subject to
13 dismissal for lack of subject matter jurisdiction because Plaintiff lacks
14 standing (*Fed. R. Civ. P. 12(b)(1)*);
- 15 2. Plaintiff’s Complaint fails to allege sufficient facts to state any cause of action
16 contained in the Complaint because none of the causes of action are ripe (*Fed.*
17 *R. Civ. P. 12(b)(6)*);
- 18 3. Plaintiff’s First Cause of Action for procedural due process fails to state a
19 claim upon which relief can be granted because the risk of deprivation that is
20 alleged is completely speculative (*Fed. R. Civ. P. 12(b)(6)*);
- 21 4. Plaintiff’s Second Cause of Action fails to state a claim upon which relief can
22 be granted because the Rental Housing Board is not an elective office
23 governed by Article I, Section 22 of the California Constitution (*Fed. R. Civ.*
24 *P.12(b)(6)*);
- 25 5. Plaintiff’s Third Cause of Action fails because Plaintiff has demonstrated no
26 facts to support its claim that the Rental Housing Board will not be a fair
27 forum for adjudication of Fair Return Petitions (*Fed. R. Civ. P. 12(b)(6)*);

1 6. Plaintiff's Fourth Cause of Action fails to state a claim upon which relief can
2 be granted because Plaintiff has alleged no facts to demonstrate it has an
3 expectation of privacy in the information required to be disclosed (*Fed. R.*
4 *Civ. P.* 12(b)(6)); and

5 7. Plaintiffs' Fifth Cause of Action fails to state a claim upon which relief can
6 be granted (*Fed. R. Civ. P.* 12(b)(6)).

7 Defendant's motion is based on the accompanying Memorandum of Points and
8 Authorities, Defendants' Request for Judicial Notice filed concurrently herewith, on
9 the full records of this matter, and upon such further briefing and argument as the
10 Court may allow at the hearing on this motion.

11 This motion is made following a conference of counsel pursuant to L.R. 7-3,
12 which took place in the form of a meet and confer letter sent by counsel for
13 Defendant to counsel for Plaintiffs on April 6, 2023.

14 Respectfully submitted,

15
16 SONIA R. CARVALHO
17 City Attorney
18 City of Santa Ana

19
20 Dated: April 13, 2023

21 By: /s/ Laura A. Rossini
22 LAURA A. ROSSINI
23 Chief Assistant City Attorney
24 Attorney for Defendants,
25 CITY OF SANTA ANA and
26 SANTA ANA CITY COUNCIL
27
28

TABLE OF CONTENTS

I. INTRODUCTION.....	4
II. STATEMENT OF FACTS	5
III. LEGAL STANDARD	7
A. Lack of Subject Matter Jurisdiction (Fed R. Civ. P. 12(b)(1)	7
B. Failure to State a Claim Upon Which Relief Can Be Granted (Fed R. Civ. P. 12(b)(6)	7
IV. PLAINTIFF’S COMPLAINT LACKS SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFF HAS FAILED TO PLEAD FACTS THAT DEMONSTRATE STANDING	8
V. PLAINTIFF’S ENTIRE COMPLAINT FAILS FOR LACK OF RIPENESS ...	9
VI. PLAINTIFF’S FIRST CAUSE OF ACTION FAILS TO STAET SUFFICIENT FACTS TO SUSTAIN A CLAIM FOR A PROCEDURAL DUE PROCESS VIOLATION	10
VII. PLAINTIFF’S SECOND CAUSE OF ACTION FAILS TO STATE A CLAIM FOR VIOLATION OF THE CALIFORNIA CONSTITUTION BECAUSE APPOINTMENT TO TH ERENTAL HOUSING BOARD WAS NOT ENCOMPASSED BY ARTICLE I, SECTION 22	11
VIII. PLAINTIFF’S THIRD CAUSE OF ACTION FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFF HAS FAILED TO ALLEGE ANY FACTS THAT DEMONSTRATE A DUE PROCESS VIOLATION	12
IX. PLAINTIFF’S FOURTH CAUSE OF ACTION ALLEGING A VIOLATION OF THE FOURTH AMENDMENT FAILS TO STATE SUFFICIENT FACTS TO DEMONSTRATE AN UNLAWFUL SEARCH OR SEIZURE	15

1	XI. PLAINTIFF’S FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF	
2	IS DEPENDENT UPON CAUSES OF ACTION ONE THROUGH FOUR AND	
3	THEREFORE FAILS	16
4	X. CONCLUSION	16
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

<i>Virginia House of Delegates v. Bethune-Hill</i> , 139 S. Ct. 1945, 1951 (2019).	7, 8
<i>Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. California Dep't of Transp.</i> , 713 F.3d 1187, 1194 (9th Cir. 2013).	7, 8, 9
<i>Am. Immigr. Laws Ass'n v. Reno</i> , 18 F. Supp.2d 38, 51 (D.C.Cir. 1998), <i>aff'd</i> , 199 F.3d 1352 (D.C. Cir. 2000).	7, 9
<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488, 497-98 (2009).	7, 9
<i>Balistreri v. Pacific Police Dep't</i> , 901 F.2d 696, 699 (9 th Cir. 1988).	8
<i>Moss v. Secret Service</i> , 572 F.3d 962, 969 (9 th Cir. 2009).	8
<i>LA Alliance for Human Rights v. City of L.A.</i> , 14 F.4th 947, 956 (9th Cir. 2021).	8
<i>Lujan v. Defes. Of Wildlife</i> 504 U.S. 555, 560-62 (1992).	9
<i>Thomas v. Union Carbide Agric. Products Co.</i> 473 U.S. 568, 580 (1985).	9
<i>Krainski v. Nevada ex rel. Bd. Of Regents of Nevada Sys. Of Higher Educ.</i> , 616 F.3d 963, 970 (9th Cir. 2010).	10
<i>Shanks v. Dressel</i> , 540 F.3d 1082, 1090 (9th Cir. 2008).	10
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 335 (1976).	10, 11, 13
<i>Reno v. Flores</i> , 507 U.S. 292, 309 (1993).	11, 13
<i>Bell Atl. Corp. v. Twombly</i> 550 U.S. 544, 555 (2007).	11, 14
<i>Munoz v. City of San Diego</i> , 37 Cal.App.3d 1 (1974).	12
<i>Choudry v. Free</i> , 17 Cal. 3d 660 (1976)	12
<i>Pennell v. City of San Jose</i> , 485 U.S. 1, 14 (1988)	13, 14
<i>Santa Monica Beach v. Superior Court</i> 19 Cal.4th 952 (1999).	13, 15
<i>Galland v. City of Clovis</i> , 24 Ca,4th 1003, 1021 (2001).	14

1	<i>Apartment Association of Greater Los Angeles v. Santa Monica Rental Control</i>	
2	<i>Board</i> , 24 Cal.App.4th 1730 (1994).....	14
3	<i>City of Berkeley v. City of Berkeley Rent Stabilization Board</i> , 27 Cal.App.4th 951	
4	(1994).	14
5	<i>Rancho De Calistoga v. City of Calistoga</i> , 800 F.3d 1083, 1090 (9th Cir. 2015)...	14
6	<i>Byrd v. United States</i> , 138 S. Ct. 1518, 1526 (2018)	15
7	<i>Carpenter v. United States</i> , 138 S. Ct. 2206, 2213-2214 (2018). 15, 16	
8	<i>Apartment Association of Greater Los Angeles v. City of Beverly Hills</i> , 2019 U.S.	
9	Dist. LEXIS 150690 at p.8 (C.D. Cal. 2019)	15, 16

10 **Rules**

11	Federal Rules of Civil Procedure.....	7
----	---------------------------------------	---

12 **Other Authorities**

13	City of Santa Ana Ordinances “RSO” and “JCE”, NS-3027.	4, 5, 13
14	City of Santa Ana Charter	5
15	City of Santa Ana Municipal Code.....	5, 6, 11, 12
16	California Constitution	11, 12

17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City of Santa Ana, a California charter city, recently adopted a Rent Stabilization Ordinance (“RSO”) and a Just Cause Eviction Ordinance (“JCE”) in order to protect the tenants of residential real property and mobilehome parks from the increasing housing rent burden, poverty, and housing instability faced by many residents in the City. The RSO and JCE became effective on November 19, 2021. (The City’s RSO and JCE are attached as Exhibits “A” and “B” respectively to Defendants’ Request for Judicial Notice (“RJN”) filed concurrently herewith.)

On October 18, 2022, the City amended the RSO and JCE and combined the two separate ordinances, titled the Rent Stabilization and Just Cause Eviction Ordinances (the “Ordinance”). (The City’s Ordinance is attached as Exhibit “C” to Defendant’s RJN.) Plaintiff, a local landlord association, through its operative Complaint, seeks declaratory and injunctive relief regarding the constitutionality of the Ordinance. Plaintiff has named both the City of Santa Ana and Santa Ana City Council as defendants in this action.

The City’s Ordinance was adopted pursuant to the City’s lawful use of its police powers to regulate public health, safety and welfare. The City has the right to adopt Ordinances such as these that address important and fundamental areas of local concern. Defendants will demonstrate that Plaintiff’s Complaint fails for lack of subject matter jurisdiction because Plaintiff has failed to allege that the Complaint was brought on the basis of associational standing and further, fails to allege sufficient facts to demonstrate that it has associational standing. Second, Defendants will show that Plaintiff has failed to allege sufficient facts to support any of the five causes of action contained in their complaint. As a result, this Court should grant Defendants’ Motion to Dismiss Plaintiff’s Complaint in its entirety.

///

///

1 II. STATEMENT OF FACTS

2 On October 19, 2021, the Santa Ana City Council adopted the RSO,
3 specifically titled, “An Ordinance of the City Council of the City of Santa Ana
4 Prohibiting Residential Real Property and Mobilehome Space Rental Rate Increases
5 that Exceed Three Percent (3%) Annually, or Eighty Percent (80%) of the Change in
6 Consumer Price Index, Whichever is Less, Within the City,” Santa Ana Ordinance
7 No. NS-3009, and the JCE, specifically titled, “An Ordinance of the City Council of
8 the City of Santa Ana Requiring Just Cause Evictions,” Santa Ana Ordinance No.
9 NS-3010. The Ordinances were properly adopted after two readings before the Santa
10 Ana City Council, in accordance with Santa Ana Charter § 413.

11 On October 18, 2022, the Santa Ana City Council amended the JCE and RSO
12 and adopted the Ordinance, officially titled, “An Ordinance of the City Council of
13 the City of Santa Ana Amending Article X of Chapter 8 of the Santa Ana Municipal
14 Code and Creating a New Article XIX in Chapter 8 of the Santa Ana Municipal Code
15 Pertaining to the Rent Stabilization and Just Cause Eviction Ordinances.” The
16 amended Ordinance is Santa Ana Ordinance No. NS-3027. The amended Ordinance
17 was properly adopted after two readings before the Santa Ana City Council in
18 accordance with Santa Ana Charter § 413.

19 As pertinent here, the Ordinance creates a Rental Registry effective July 1,
20 2023 that requires all Landlords with Rental Units in the City of Santa Ana to
21 complete and submit Registration Forms for each Rental Unit. (Santa Ana Municipal
22 Code (“SAMC”) § 8-3160, RJN Exhibit C.) The Registration Form requires the
23 following information from the Landlord for each Rental Unit: (1) address of each
24 Rental Unit including identifying number or letter; (2) Number of bedrooms and
25 Bathrooms in Rental Unit; (3) Name, current address, and contact information of
26 current Owners, authorized representatives and property managers; (4) Date of
27 assumption of ownership by current Owners; (5) Current Rent; (6) Date and amount
28 of last Rent Increase; and (7) Move-in date of current Tenant(s). (SAMC § 8-

1 3160(g), RJN Exhibit C.) Commencing October 1, 2023, the City may commence
2 enforcement against any Landlord who fails to register a Rental Unit. (SAMC § 8-
3 3160(k), RJN Exhibit C.)

4 The Ordinance also provides that a Landlord may submit a Fair Return Petition
5 to the Program Administrator requesting a Rent Increase in excess of that provided
6 by the Ordinance in order to obtain a fair and reasonable return of the Rental Unit.
7 (SAMC § 8-3142, RJN Exhibit C.) The Ordinance further provides for a process by
8 which a Landlord may submit a Capital Improvement Petition to the Program
9 Administrator requesting a pass-through cost to the Tenants to cover expenses
10 incurred by the Landlord to complete the Capital Improvements for the Rental Unit.
11 (SAMC § 8-3143, RJN Exhibit C.) Finally, the Ordinance allows a Tenant to submit
12 a Petition to the Program Administrator as specified in the Ordinance. (SAMC § 8-
13 3144, RJN Exhibit C.) Once any Petition is filed, the Program Administrator will
14 notify the Party that filed the Petition whether the Petition is accepted or denied based
15 upon completeness of the submission. (SAMC § 8-3145(a), RJN Exhibit C.) If
16 accepted, the Petition is heard by an impartial Hearing Officer or the Rental Housing
17 Board , on its own motion, in the Board's sole discretion, may hold a hearing on a
18 Petition without the Petition first being heard by a Hearing Officer. (SAMC § 8-
19 3145(f)-(g), RJN Exhibit C.) The Ordinance provides for the right to appeal any
20 decision of the Hearing Officer to the Board and if no Board exists, to utilize the
21 administrative appeal process in SAMC Chapter 3. (SAMC § 8-3145(q), RJN
22 Exhibit C.) Any decision of the Board is subject to judicial review. (SAMC § 8-
23 3185, RJN Exhibit C.)

24 On February 14, 2023, Plaintiff, Orange County Apartment House
25 Association, Inc. dba Apartment Association of Orange County ("Plaintiff") filed a
26 Complaint for Declaratory and Injunctive Relief against the City of Santa Ana and
27 Santa Ana City Council, seeking to declare, among other requests, the Ordinance
28 unconstitutional. (*See Complaint.*)

1 III. LEGAL STANDARD

2 A. Lack of Subject Matter Jurisdiction (*Fed. R. Civ. P.* 12(b)(1))

3 A motion to dismiss may be brought on the grounds that Plaintiff lacks subject
4 matter jurisdiction. (*Fed. R. Civ. P.* 12(b)(1).) Standing is jurisdictional and cannot
5 be waived or forfeited. (*Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct.
6 1945, 1951 (2019).)

7 Plaintiff does not allege that the Association itself has suffered any cognizable
8 injury. Instead, it appears that Plaintiff is bringing this action on behalf of its
9 members. However, associational standing requires that Plaintiff demonstrate (1) its
10 members would otherwise have standing to sue in their own right; (2) the interests it
11 seeks to protect are germane to the organization’s purpose; and (3) neither the claim
12 asserted nor the relief requested requires the participation of individual members in
13 the lawsuit. (*See, Associated Gen. Contractors of Am., San Diego Chapter, Inc. v.*
14 *California Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013). The first prong of
15 the test for associational standing requires Plaintiff to specifically identify the
16 individual member or members who have suffered or will suffer harm and would be
17 entitled to sue in their own right. (*Id.*, at 1194-95 (describing how plaintiff failed to
18 identify any affected members by name or submit declarations by members attesting
19 to their harm); *Am. Immigr. Laws Ass’n v. Reno*, 18 F. Supp.2d 38, 51 (D.C.Cir.
20 1998), *aff’d*, 199 F.3d 1352 (D.C. Cir. 2000).) The Supreme Court itself stressed that
21 an injured member of the organization must ordinarily be specifically identified to
22 establish Article III standing for an organization. (*Summers v. Earth Island Inst.*,
23 555 U.S. 488, 497-98 (2009).)

24 B. Failure to State a Claim Upon Which Relief Can be Granted (*Fed. R. Civ. P.*
25 12(b)(6)

26 Grounds for bringing a motion to dismiss include “failure to state a claim upon
27 which relief can be granted.” (*Fed. R. Civ. P.* 12(b)(6).) Dismissal is proper if there
28 is a “lack of cognizable legal theory” or the “absence of sufficient facts alleged under

1 a cognizable legal theory.” (*Balistreri v. Pacific Police Dep’t*, 901 F.2d 696, 699 (9th
 2 Cir. 1988).) While Plaintiffs are entitled to have well pled allegations taken as true,
 3 “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires
 4 more than labels and conclusions” (*Balistreri v. Pacific Police Dep’t*, 901 F.2d
 5 696, 699 (9th Cir. 1988).) Finally, “. . . for a complaint to survive a motion to dismiss,
 6 the non-conclusory factual content, and reasonable inferences from that content,
 7 must be plausibly suggestive of a claim entitling plaintiff to relief.” (*Moss v. Secret*
 8 *Service*, 572 F.3d 962, 969 (9th Cir. 2009).)

9 **IV. PLAINTIFF’S COMPLAINT LACKS SUBJECT MATTER**
 10 **JURISDICTION BECAUSE PLAINTIFF HAS FAILED TO PLEAD**
 11 **FACTS THAT DEMONSTRATE STANDING**

12 As noted above, standing is jurisdictional. (*Virginia House of Delegates v.*
 13 *Bethune-Hill* 139 S. Ct. 1945, 1951 (2019); *LA Alliance for Human Rights v. City*
 14 *of L.A.*, 14 F.4th 947, 956 (9th Cir. 2021).) Plaintiff alleges in its Complaint, that
 15 Plaintiff is comprised of approximately 2,000 rental property owners, operators,
 16 and industry suppliers in Orange and Riverside Counties¹. (See, Complaint ¶ 1.)
 17 However, Plaintiff does not allege that it is suing based on associational standing
 18 nor does it allege it has met any of the elements to do so. Associational standing
 19 requires that Plaintiff demonstrate (1) its members would otherwise have standing
 20 to sue in their own right; (2) the interests it seeks to protect are germane to the
 21 organization’s purpose; and (3) neither the claim asserted nor the relief requested
 22 requires the participation of individual members in the lawsuit. (See, *Associated*
 23 *Gen. Contractors of Am., San Diego Chapter, Inc. v. California Dep’t of Transp.*,
 24 713 F.3d 1187, 1194 (9th Cir. 2013).)

25 For the first prong, Plaintiff has failed to identify any individual members or
 26 members who have suffered or will suffer harm and would be entitled to sue in

27
 28

¹ Interestingly, Plaintiff fails to mention that Defendant City of Santa Ana is also a member of the AAOC.

1 their own right. (*Associated Gen. Contractors of Am., San Diego Chapter, Inc. v.*
 2 *California Dep't of Transp.*, 713 F.3d 1187, 1194-95 (9th Cir. 2013)(describing
 3 how plaintiff failed to identify any affected members by name or submit
 4 declarations by members attesting to their harm); *Am. Immigr. Laws Ass'n v. Reno*,
 5 18 F. Supp.2d 38, 51 (D.C.Cir. 1998), *aff'd*, 199 F.3d 1352 (D.C. Cir. 2000).) The
 6 Supreme Court itself stressed that an injured member of the organization must
 7 ordinarily be specifically identified to establish Article III standing for an
 8 organization. (*Summers v. Earth Island Inst.* 555 U.S. 488, 497-98 (2009). As
 9 such, Plaintiff has failed to allege facts that demonstrate it has met the first prong
 10 for associational standing. Therefore, Plaintiff cannot maintain subject matter
 11 jurisdiction and the Complaint should be dismissed.

12 V. PLAINTIFF'S ENTIRE COMPLAINT FAILS FOR LACK OF RIPENESS

13 The ripeness doctrine ensures litigation may occur only when there is
 14 concrete impact upon the parties, resulting from injury in fact. (*See, Lujan v.*
 15 *Defes. Of Wildlife* 504 U.S. 555, 560-62 (1992); *Thomas v. Union Carbide Agric.*
 16 *Products Co.* 473 U.S. 568, 580 (1985).) Plaintiff's Complaint, however, alleges
 17 no injury in fact but rather contains numerous tenuous and speculative assertions
 18 that are not based upon actual injuries or facts. Plaintiff's First Cause of Action
 19 alleges a violation of due process pursuant to the 14th Amendment, on the grounds
 20 that the Rental Housing Board's composition is imbalanced. However, Plaintiff
 21 does not allege that members of the Rental Housing Board have been appointed.
 22 As a result, this claim is not ripe. Plaintiff's Second Cause of Action for violation
 23 of the California Constitution's prohibition on property qualifications for holding
 24 office also fails because it is not ripe for the same reason as the First Cause of
 25 Action.

26 As to the Third Cause of Action, Plaintiff speculates about a future harm that
 27 has not yet occurred and may never occur. (Complaint ¶ 55.) Plaintiff's Fourth
 28

1 Cause of Action alleges that the registration requirement of the Ordinance
 2 constitutes an unlawful search and seizure. However, Plaintiffs do not allege that
 3 they have been required to submit any registration documents. Finally, assuming
 4 the First through Fourth Causes of Action fail for lack of ripeness, then the Fifth for
 5 declaratory relief, must also fail for the same reason.

6 VI. PLAINTIFF’S FIRST CAUSE OF ACTION FAILS TO STATE
 7 SUFFICIENT FACTS TO SUSTAIN A CLAIM FOR A PROCEDURAL
 8 DUE PROCESS VIOLATION

9 A claim for violation of procedural due process requires “deprivation of a
 10 constitutionally protected liberty or property interest and denial of adequate
 11 procedural protection.” (*Krainski v. Nevada ex rel. Bd. Of Regents of Nevada Sys.*
 12 *Of Higher Educ.*, 616 F.3d 963, 970 (9th Cir. 2010); *Shanks v. Dressel*, 540 F.3d
 13 1082, 1090 (9th Cir. 2008).) The “process” that is due still requires consideration
 14 of the three factors and the balancing test from *Mathews v. Eldridge*:

15 First, the private interest that will be affected by the official action; second,
 16 the risk of an erroneous deprivation of such interest through the procedures
 17 used, and the probably value, if any, of additional or substitute procedural
 18 safeguards; and finally, the Government’s interest, including the function
 19 involved and the fiscal and administrative burdens that the additional or
 20 substitute procedural requirement would entail.

424 U.S. 319, 335 (1976).

21 The basis for Plaintiff’s procedural due process claim is that “the Rental
 22 Housing Board is imbalanced in favor of tenants by design. By stacking the deck
 23 against landlords and in favor of tenants and tenant interests, Plaintiff alleges, the
 24 Rental Housing Board will not be a forum for fair adjudication of the petitions
 25 presented to it. (Complaint ¶ 34.) Plaintiff further alleges “the Rental Housing
 26 Board’s imbalanced composition will infect the fairness of its rulings, and the three
 27 tenant Board Members will have a pecuniary interest in the outcome of the Board’s
 28 decisionmaking process.” (Complaint ¶ 36.) However, this argument completely

disregards the fact that Petitions would first be heard by an impartial hearing officer unless the Board opted to hear the Petition directly and that there is a right of appeal either to the Board after the Hearing Officer or by way of Judicial Review. (SAMC § 8-3145, RJN Exhibit C.) Furthermore, the Rental Housing Board will have a total of seven members made up of two landlord representatives, three tenant representatives and two at large members. (RJN ¶ C.) The fundamental requirement of due process is “the opportunity to be heard ‘at a meaningful time and in a meaningful manner’.” (*Mathews v. Eldridge* 429 U.S. 319, 333 (1976).) The City’s Ordinance provides both an avenue for a hearing in front of Hearing Officer and/or the Rental Housing Board and judicial review of any determination made by that Board. That is all that is required to demonstrate compliance with procedural due process. (*Id.* ; *Also see, Reno v. Flores*, 507 U.S. 292, 309 (1993).)

Further, Plaintiff’s claim that the mere inclusion of three landlord representatives on a seven members board results in a procedural due process violation is unsupported by legal authority or the facts of this matter. While Plaintiff is entitled to have well pled allegations taken as true, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions” (*Bell Atl. Corp. v. Twombly* 550 U.S. 544, 555 (2007).) Therefore, Plaintiff has failed to demonstrate sufficient facts in the First Cause of Action to support a claim for violation of Plaintiff’s procedural due process rights.

VII. PLAINTIFFS’ SECOND CAUSE OF ACTION FAILS TO STATE A CLAIM FOR VIOLATION OF THE CALIFORNIA CONSTITUTION BECAUSE APPOINTMENT TO THE RENTAL HOUSING BOARD WAS NOT ENCOMPASSED BY ARTICLE I, SECTION 22.

Plaintiff alleges that Article I, Section 22 of the California Constitution “provides that ‘[t]he right to vote or hold office may not be conditioned by a property qualification.” (Complaint ¶ 33.) Plaintiffs also allege, “[b]y the express terms of the Ordinance, the ownership of a property interest is a precondition to

1 holding any of the seven Rental Housing Board Member Positions.” (Complaint ¶
 2 43.) However, this contention is not entirely accurate because there is no property
 3 requirement for the two at large members of the Rental Housing Board. (SAMC §
 4 8-3180(a), RJN Exhibit C.) As for the three tenant members and two landlord
 5 members, Plaintiff alleges that a leasehold estate or fee estate, respectively, is
 6 required for membership. Even if true, this does not offend the state constitutional
 7 prohibition on property qualifications for holding office.

8 As an initial matter, Plaintiff cites no authority beyond the California
 9 Constitution that applies this prohibition as broadly as Plaintiff contends that it
 10 should apply. This would include as argued by Plaintiff, application to nonelected
 11 board membership. Indeed, the case law discussing this prohibition is limited to
 12 the types of public offices for which individuals normally stand for election. (*See*,
 13 *e.g.*, *Munoz v. City of San Diego*, 37 Cal.App.3d 1 (1974) (discussing predecessor
 14 prohibition on property qualifications to hold office in the context of elected city
 15 council membership); *Choudry v. Free*, 17 Cal. 3d 660 (1976) (challenging
 16 property ownership requirement for election to director of water district brought
 17 under Article I, Section 22.) The Rental Housing Board seats are appointed not
 18 elected positions. Therefore, Plaintiff has failed to state sufficient facts to
 19 demonstrate a violation of Article I, Section 22 of the California Constitution.

20 VIII. PLAINTIFFS’ THIRD CAUSE OF ACTION FAILS TO STATE A CLAIM
 21 UPON WHICH RELIEF CAN BE GRANTED BECAUSE PLAINTIFF
 22 HAS FAILED TO ALLEGE ANY FACTS THAT DEMONSTRATE A
 23 DUE PROCESS VIOLATION

24 Plaintiff alleges that the City’s Ordinance is facially invalid because the
 25 “Rental Housing Board will not be a fair forum for adjudication” of Fair Return
 26 Petitions (Complaint ¶ 56-57) and therefore appears to be alleging a procedural due
 27 process violation similar to that in the First Cause of Action. Plaintiff also alleges,
 28 “the Ordinance’s rent control provisions serve to cap annual rent increases at a
 maximum of 3% or 80% of the Consumer Price Index, whichever is less. The

1 annual maximum percent increase is determined by the City and not by individual
 2 landlords.” (Complaint ¶ 53.) Plaintiff further alleges, “The delta between
 3 inflation of the dollar versus inflation of rents in the City will thus grow to
 4 unconstitutional proportions and deprive owners of a fair return on investment.
 5 Because the Ordinance restricts rent increases for regulated properties in such a
 6 manner, it is invalid on its face as it is impossible for the City to avoid confiscatory
 7 results. (Complaint ¶ 54.)

8 However, facial validity of an ordinance challenged on due process grounds
 9 is tested under a “rational basis” standard of review. (*Pennell v. City of San Jose*,
 10 485 U.S. 1, 14 (1988).) Protection of consumer welfare is recognized as a
 11 “legitimate” and rational goal of rent control. (*Id.*, at p. 3.) Courts have expressly
 12 recognized as a valid government purpose “preventing excessive and unreasonable
 13 rent increases caused by the growing shortage of and increasing demand for
 14 housing within a municipality.” (*Santa Monica Beach v. Superior Court* 19 Cal.4th
 15 952 (1999).) The City made clear that one finding supporting the adoption of the
 16 Ordinance is that “significant rent increases and housing instability pose a threat to
 17 public health, safety and welfare, and a particular hardship for senior citizens,
 18 persons living on fixed incomes, and other vulnerable persons living in Santa Ana.
 19 (Ordinance No. NS-3027, Section 1C, RJN Exhibit C.)

20 As noted above in regards to the First Cause of Action, the City has adopted
 21 procedures for providing a fair rate of return and a pass-through to the tenant for
 22 capital improvements. (SAMC §§ 8-3141, 8-3142, 8-3143, RJN Exhibit C.) In
 23 addition, such Petitions are heard either by an impartial Hearing Officer or by the
 24 Board with the right to appeal to the Board or for judicial review. (SAMC § 8-
 25 3145, RJN Exhibit C.) As a result, procedural due process is provided. (*See*,
 26 *Mathews v. Eldridge* 429 U.S. 319, 333 (1976); *Reno v. Flores*, 507 U.S. 292, 309
 27 (1993).)

1 Furthermore, “rent regulation must not prevent an efficient enterprise from
 2 operating successfully but rent regulators are permitted to adjust prices within a
 3 broad zone of reasonableness balancing the interests of landlords and tenants.”
 4 (*Galland v. City of Clovis*, 24 Ca,4th 1003, 1021 (2001).) Plaintiff alleges only
 5 speculative and conclusory statements about the potential for future harm as
 6 support for the Third Cause of Action. These allegations are insufficient to
 7 withstand the instant motion. (*Bell Atl. Corp. v. Twombly* 550 U.S. 544, 555
 8 (2007).)

9 Lastly, Plaintiff’s may state that it is bringing a due process claim but in
 10 reality, it is a veiled takings claim. Case law does not support allegations that the
 11 Ordinance is confiscatory and contrary to Plaintiff’s assertions, landlords have been
 12 provided a process for a fair return. (See, e.g., *Pennell*, 485 U.S. at 11; *Apartment*
 13 *Association of Greater Los Angeles v. Santa Monica Rental Control Board*, 24
 14 Cal.App.4th 1730 (1994); *I*) In fact, United States Supreme Court cases have
 15 “long established that mere diminution in the value of property, however serious, is
 16 insufficient to demonstrate a taking.” (*Rancho De Calistoga v. City of Calistoga*,
 17 800 F.3d 1083, 1090 (9th Cir. 2015).) Plaintiffs’ economic interests and
 18 investment-backed expectations do not amount to a taking because the Ordinance is
 19 a regulation on the use of property, and in particular an allowable regulation on
 20 housing conditions and the landlord-tenant relationship. The Ordinance does not
 21 preclude all use of Plaintiffs’ property. Instead, it only regulates certain activities.
 22 As a result, Plaintiffs’ Third Cause of Action for what amounts to a facial
 23 regulatory taking fails as a matter of law and is subject to dismissal.

24 ///

25 ///

26 ///

27 ///

28

IX. PLAINTIFFS’ FOURTH CAUSE OF ACTION ALLEGING A VIOLATION OF THE FOURTH AMENDMENT FAILS TO STATE SUFFICIENT FACTS TO DEMONSTRATE AN UNLAWFUL SEARCH OR SEIZURE

Plaintiff’s Fourth Cause of Action alleges “[b]y forcing property owners to enroll in the Rental Registry and supply the information demanded of them, the City will engage in unreasonable and unlawful searches in contravention of the Fourth Amendment to the United States Constitution.” (Complaint ¶ 59.) Specifically, Plaintiff takes issue with the requirement that owners submit a “registration form for each rental unit in the City at least once a year, if not, otherwise upon transfer of fee title to another, and also upon the vacancy or reletting of each and every unit within the City. (Complaint ¶ 63.) Plaintiff goes on to claim that the City has no substantial government interest in the collection of the information. (Complaint ¶ 61.)

Case law makes clear that rent control ordinances are generally recognized as having a legitimate governmental purpose. (*See, Pennell v. City of San Jose* 485 U.S. 1, 3; *Santa Monica Beach v. Superior Court* 19 Cal.4th 952 (1999).)

In addition, a claim for violation of the Fourth Amendment for unlawful search or seizure requires facts that demonstrate Plaintiff has an expectation of privacy in the items to be searched or seized. (*See, Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018); *Carpenter v. United States*, 138 S. Ct. 2206, 2213-2214 (2018).) Plaintiff has pled no facts that demonstrate any expectation of privacy in the information required to be disclosed pursuant to the Rental Registration Form.

Furthermore, to the extent that Plaintiff would attempt amendment of its claim, it should be noted that “biographical information” about rental units, including number of bedrooms and bathrooms or monthly rent, are either matters of public record or are regularly disclosed in rental applications submitted to local governments to increase rent or withdraw rental units from the market. (*See, Apartment Association of Greater Los Angeles v. City of Beverly Hills*, 2019 U.S.

1 Dist. LEXIS 150690 at p.8 (C.D. Cal. 2019).) Likewise, the name of current
 2 owners, authorized representatives and property managers and the date of
 3 assumption of ownership would be a matter of public record. Finally, the date of
 4 the last rent increase and the move-in date of the current tenant(s) are hardly
 5 information in which Plaintiff or its members would have a reasonable expectation
 6 of privacy. In particular, tenants are free to share that information with anyone they
 7 choose and there is a reduced expectation of privacy in information shared with
 8 third parties. (*See, Carpenter*, 138 S.Ct. at 2219.) Under all of these
 9 circumstances, Plaintiff's Fourth Cause of Action must fail.

10 X. PLAINTIFFS' FIFTH CAUSE OF ACTION FOR DECLARATORY
 11 RELIEF IS DEPENDENT UPON CAUSES OF ACTION ONE THROUGH
 12 FOUR AND THEREFORE FAILS

13 Plaintiff's Fifth Cause of Action for Declaratory Relief rises and falls with
 14 the rest of the claims in the Complaint. Assuming that the First through Fourth
 15 Cause of Action fail to allege sufficient facts to state any claim, the Fifth Cause of
 16 Action must also fail.

17 XI. CONCLUSION

18 Based upon the foregoing, Defendants respectfully request that this Court
 19 grant its motion to dismiss Plaintiff's Complaint in its entirety.

20 Respectfully submitted,

21 SONIA R. CARVALHO
 22 City Attorney
 23 City of Santa Ana

24 Dated: April 13, 2023

25 By: /s/ Laura A. Rossini
 26 Laura A. Rossini
 27 Chief Assistant City Attorney
 28 Attorney for Defendants,
 CITY OF SANTA ANA; and
 SANTA ANA CITY COUNCIL

PROOF OF SERVICE

USDC – Central District of California, Case No.: 8:23-cv-00608-CJC-ADSx
Orange County Apartment House Association, et al v. City of Santa Ana, et al.

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, #M-29, Santa Ana, California 92701.

On April 13, 2023, I served the foregoing document described as DEFENDANTS CITY OF SANTA ANA AND SANTA ANA CITY COUNCIL'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

[] **BY REGULAR MAIL:** I deposited such envelope in the mail at 20 Civic Center Plaza, 7th Floor, Santa Ana, CA 92701. The envelope was mailed with postage thereon fully prepaid.

I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** The foregoing document will be served by the court via NEF. On April 13, 2023 I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail List to receive NEF transmission at the email address(es) indicated in the attached service list.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on April 13, 2023, at Santa Ana, California.

/s/ Suzanne St. Clair
 Suzanne St. Clair

SERVICE LIST

USDC – Central District of California, Case No.: 8:23-cv-00608-CJC-ADSx
Orange County Apartment House Association, et al v. City of Santa Ana, et al.

<p>A. Patrick Muñoz Douglas J. Dennington Jayson A. Parsons RUTAN & TUCKER, LLP 18575 Jamboree Road, 9th Floor Irvine, CA 92612</p>	<p>Attorneys for Plaintiffs Telephone: (714) 641-5100 Facsimile: (714) 546-9035 emails: pmunoz@rutan.com; ddennington@rutan.com; jparsons@rutan.com</p>
---	--